

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**RIMS BARBER; CAROL BURNETT; JOAN
BAILEY; KATHERINE ELIZABETH DAY;
ANTHONY LAINE BOYETTE; DON
FORTENBERRY; SUSAN GLISSON; DERRICK
JOHNSON; DOROTHY C. TRIPLETT;
RENICK TAYLOR; BRANDILYNE MANGUM-
DEAR; SUSAN MANGUM; JOSHUA
GENERATION METROPOLITAN
COMMUNITY CHURCH; CAMPAIGN FOR
SOUTHERN EQUALITY and THE REV. DR.
SUSAN HROSTOWSKI,**

Plaintiffs,

vs.

**PHIL BRYANT, in his official capacity as
Governor of the State of Mississippi; JIM HOOD,
in his official capacity as Mississippi Attorney
General; JOHN DAVIS, in his official capacity as
Executive Director of the Mississippi Department
of Human Services; and JUDY MOULDER, in her
official capacity as Mississippi State Registrar of
Vital Records,**

Defendants.

**CIVIL ACTION NO. 3:16-cv-
417-CWR-LRA**

consolidated with

**CIVIL ACTION NO. 3:16-cv-
442-CWR-LRA**

**DECLARATION OF ROBERTA A. KAPLAN IN OPPOSITION TO
DEFENDANTS BRYANT'S AND DAVIS'S
MOTION TO STAY PRELIMINARY INJUNCTION PENDING APPEAL**

ROBERTA A. KAPLAN declares under penalty of perjury, pursuant to 28 U.S.C.

§ 1746, as follows:

1. I am an attorney admitted to practice law in the State of New York and a partner at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York, 10019-6064. As counsel for Plaintiffs Campaign

for Southern Equality and The Rev. Dr. Susan Hrostowski (the “CSE Plaintiffs”) in this consolidated action, I submit this affidavit in opposition to Defendants Bryant’s and Davis’s Motion to Stay the Preliminary Injunction Pending Appeal, dated July 21, 2016.

Procedural Background

2. On June 16, 2016, on behalf of the Campaign for Southern Equality, I submitted a request to Defendant Bryant under the Mississippi Public Records Act of 1983, Miss. Code Ann. §§ 25-61-1 et seq. seeking copies of public records relating to, among other things, correspondence or communications between the office of Mississippi Governor Phil Bryant and the Alliance Defending Freedom (“ADF”), the American Family Association (“AFA”), and any other individual, organization, or entity that assisted in the drafting of or advised on HB 1523. A copy of that letter is attached as Exhibit A.

3. On July 5, 2016, Whitney Lipscomb, Counsel to Defendant Bryant, responded to my public records request. Ms. Lipscomb stated that Defendant Bryant was unable to comply within seven working days and requested an additional seven working days to respond, pursuant to Miss. Code Ann. § 25-61-5. A copy of that letter is attached as Exhibit B.

4. On July 6, 2016, I responded to Ms. Lipscomb’s letter by agreeing to an extension of the deadline to respond to July 14, 2016. A copy of that letter is attached as Exhibit C.

5. On July 8, 2016, Ms. Lipscomb responded to my July 6 letter by asking that I narrow two of my initial requests. A copy of that letter is attached as Exhibit D.

6. On June 13, 2016, I responded to Ms. Lipscomb's letter, confirming that Request Nos. 1 and 2 of my public records request could be narrowed to the period beginning on January 1, 2014 through the present, and could be further narrowed to cover all correspondence between the Office of Governor Bryant and the ADF and/or AFA related to policies or legislation regarding the protection of religious liberty, including but not limited to any correspondence or communication regarding HB 1523. A copy of that letter is attached as Exhibit E.

7. On July 14, 2016 Defendant Bryant produced 62 pages of emails, correspondence, and other documents related to HB 1523 (the "Bryant Documents"). A true and correct copy of a letter from Whitney Lipscomb, Counsel to Defendant Bryant, to me, dated July 14, 2016, enclosing those materials is attached hereto as Exhibit F. The letter states that the enclosed documents consist of "correspondence or communications between the office of Governor Phil Bryant and the Alliance Defending Freedom . . . and [or] the American Family Association."

The Bryant Documents

8. In connection with the CSE Plaintiffs' motions for a preliminary injunction in these consolidated matters, Professor Douglas NeJaime of the UCLA School of Law and the Williams Institute testified as an expert in the history of religious accommodation statutes and the role of Christian right organizations in advocating for these laws, including HB 1523, before this Court on June 23, 2016. More specifically, Professor NeJaime testified that "there are prominent Christian right national organizations that have been advocating for religious exemptions in state legislatures and

most prominently including groups like the Family Research Council, the Alliance Defending Freedom, [and] the American Family Association.” Hr’g Tr. Vol. 1 53:20–54:2 (June 23, 2016).

9. During his testimony, this Court posed the follow question to Professor NeJaime: “Is there—the model legislation, is that a public record anywhere? Have you seen any model legislation based on either these RFRA statutes or the new type of statutes that have been enacted since Obergefell?” Hr’g Tr. Vol. 1 81:19-23 (June 23, 2016). Not only do the documents unequivocally answer Your Honor’s question, *see* ¶¶ 10-11 below, but they completely corroborate the substance of Professor NeJaime’s expert testimony that HB 1523 was drafted by the ADF, was promoted by the ADF and other conservative Christian groups, and that, as a result, HB1523 improperly and unconstitutionally reflects the sectarian Christian values of these organizations. Hr’g Tr. Vol. 1 62:16–63:18 (June 23, 2016).

10. Attached hereto as Exhibit G is a true and correct copy of an email from Austin Nimocks, senior counsel for ADF, to Drew Snyder and Jim Campbell of the Mississippi Governor’s Office, dated June 24, 2015 attaching a model executive order. The letter states, in relevant part, as follows: “We are working with organizations that have drafted the attached materials. The main document is a model executive order that would prevent state governments from discriminating against their citizens because of their views about or actions concerning marriage. It is a different approach to the very good Executive Order that Governor Jindal released a few weeks ago . . . If you think this is a worthy idea, feel free to share this with the Governor Bryant. It could provide an

appropriate response to the upcoming Supreme Court decision on marriage (whatever that decision may be).”

11. The model executive order that is attached as part of Exhibit G looks very similar to HB 1523. Like HB 1523, it identifies three religious beliefs for special protection: “(1) marriage is or should be recognized as the union of one man and one woman; (2) sexual relations are properly reserved to such a marriage; [and] (3) male (man) or female (woman) refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics by time of birth.” The accompanying memorandum, in turn, provides that “Governors can take the lead by instructing all agencies of state government never to punish a citizen, charity, school, student, family business, adoption agency, religious organization, shelter, or any other institution of civil society because they believe and act on their beliefs about marriage being a union of husband and wife.”

12. To illustrate the similarities between the final text of HB 1523 and the Model Executive Order, a redline showing the text of HB 1523 compared with the Model Executive Order is attached hereto as exhibit H.

13. Attached hereto as Exhibit I is a true and correct copy of an letter from New Beginnings International Children’s and Family Services, Inc. to Lieutenant Governor of Mississippi Tate Reeves, dated March 3, 2016. This document forcefully illustrates the potential harms to gay and lesbian couples seeking to adopt as a result of HB 1523. The letter states, in pertinent part, that: “We believe the best outcome for every child results from being raised in a two-parent home with a male and female role model. In our experience, we have never had a birthmother request a same-sex couple to

adopt her child. However, we have had at least five birthmothers who identified themselves as lesbians seek our services because they wanted a two-parent, male and female home for their children. Allowing us to live out our deeply held beliefs will not prevent a same-sex couple from working with an agency that allows same-sex adoption. We have already referred couples identifying themselves as ‘same-sex’ to agencies *in other states who do not hold the same beliefs as we do.*” (emphasis added).

14. A true and correct copy of an email from Jameson Taylor, Vice President for Policy at the Mississippi Center for Public Policy¹ to Drew Snyder, Joey Songy, and Knox Graham of the Mississippi Governor’s Office, dated March 28, 2016, attaching letters of support for HB 1523, is attached hereto as Exhibit J. As we have argued to this Court in connection with Section 3(8) of HB1523, *see Campaign for S. Equal v. Bryant*, 3:14-cv-00818, Pls. Reply Br. at 4, the email states that Circuit Clerks actively lobbied for the right to deny marriage licenses to gay and lesbian couples: “[C]lerks and others have also asked for similar protections and met with the Speaker toward that end.”

15. Attached hereto as Exhibit K is a true and correct copy of an email from Kellie Fiedorek, legal counsel for ADF, dated March 31, 2016. In the email, Ms. Fiedorek asks to “chat” with Governor Bryant’s counsel “about how [ADF] can help [Governor Bryant’s] office from a PR/messaging/support perspective in the next few weeks as [HB 1523] heads your way.” The email states: “Obviously there will likely be significant opposition so we want to help come behind you all however we can with national support and cover as well as activating folks in the state.”

¹ The Mississippi Center For Public Policy is a conservative think tank in Jackson, MS. Its mission is to “promote and protect the concepts of free markets, limited government, and strong traditional families.” Mission Statement, Mississippi Center For Public Policy, available at <http://www.msppolicy.org/about/mission.php>.

16. Attached hereto as Exhibit L is a true and correct copy of an email from Jameson Taylor of the Mississippi Center for Public Policy to Drew Snyder, Joey Songy, and Knox Graham of the Mississippi Governor's Office, dated April 4, 2016. The email contains talking points to be used in support of HB 1523. The talking points state, in relevant part, that: "HB 1523 is very narrowly and carefully crafted in response to one thing: the Supreme Court same-sex marriage decision." The talking points go on to state that: "HB 1523 does not authorize discrimination in any way. Rather, it says that the force of government may not be used against someone who sincerely believes marriage is a union of one man/one woman. *An analogy may help put this bill into perspective. We would never think of forcing a Jewish baker to make a swastika-adorned cake for a neo-Nazi wedding.*" (emphasis added).

17. A true and correct copy of an email from Mike Armour, State Program Manager for the Appalachian Regional Commission, forwarded from Mississippi Center for Public Policy, to Clay Foster and Joe Rutherford, Publishers at Journal Inc., dated April 4, 2016, and a true and correct copy of an Email from John Boykin forwarding an email from Mississippi Center for Public Policy to Joey Songy, of the Mississippi Governor's Office, dated April 5, 2016, are attached hereto as Exhibit M. The email attaches an op-ed in support of HB 1523, which states as follows: "Our society, I hope, would never be alright *with the government forcing an African-American t-shirt shop to design and print shirts for a Klan parade, even if that parade is legally organized. We would never think of forcing a Jewish baker to make a swastika-adorned cake for a neo-Nazi wedding, which is also legal to hold.*" (emphasis added).

18. A true and correct copy of an email from Jameson Taylor, of the Mississippi Center for Public Policy, to Drew Snyder, Knox Graham, and Joey Songy, of the Mississippi Governor's Office, dated April 5, 2016, is attached hereto as Exhibit N. The email ties HB 1523 to the religious right's broader nationwide fight against LGBT equality, stating "I will add that, frankly, if [HB 1523] fails it will severely cripple the entire fight for religious liberty nationwide."

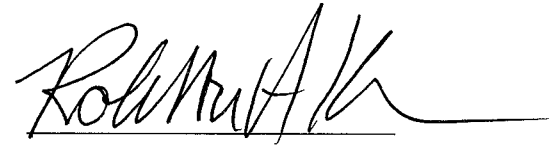
19. A true and correct copy of an email from Whitney Lipscomb, of the Mississippi Governor's Office, to Kellie Fiedorek of ADF, dated March 31, 2016, attaching a draft signing statement for HB 1523 and a signing statement from March 18, 2013, and a true and correct copy of an Email from Kellie Fiedorek to Whitney Lipscomb, dated April 1, 2016, attaching draft Signing Statements, are attached hereto as Exhibit O. These emails indicate that ADF drafted Governor Bryant's Signing Statement for HB 1523.

20. Attached hereto as Exhibit P is a true and correct copy of a letter from National Hispanic Christian Leadership Conference to Governor Bryant urging him to sign HB 1523. This letter actually has the audacity to quote Reverend Martin Luther King Jr., in support of HB1523, as follows: "As Reverend Martin Luther King, Jr, reminds us, 'There comes a time when one must take a position that is neither safe, nor politic, nor popular, but he must take it because conscience tells him it is right.'"

21. A true and correct copy of remaining documents and correspondence produced to us by Defendant Bryant on July 14, 2016 are attached hereto as Exhibit Q.

Executed on July 20, 2016.

Roberta A. Kaplan

A handwritten signature in black ink, appearing to read "Roberta A. Kaplan", written over a horizontal line.